

## § 1.50B-2

## 26 CFR Ch. I (4-1-09 Edition)

(3) Is a dependent (described in section 152(a)(9) of the Code) of the taxpayer, or, if the taxpayer is a corporation, of an individual described in subparagraph (1), or, if the taxpayer is an estate or trust, of a grantor, beneficiary, or fiduciary of the estate or trust.

(h) *WIN employee.* For purposes of §§1.50A-1 through 1.50B-5 the term “WIN employee” means an employee who is certified by the Secretary of Labor as meeting the requirements of paragraphs (a)(1) (i) and (ii) of this section.

(i) [Reserved]

(j) *Special rule applicable to transactions to which section 381(a) applies and transactions involving a mere change in form of conducting a trade or business.* The first 12 months of employment (whether or not consecutive) and the period described in section 50B (c)(4) of any WIN employee, for purposes of determining the amount of WIN expenses (as defined in paragraph (a) of §1.50B-1), shall not be affected by transactions to which the rule contained in paragraph (f) (relating to transaction to which section 381(a) (relating to certain corporate acquisitions) applies), or paragraph (g) (relating to a mere change in form of conducting a trade or business) of §1.50A-4 applies.

[38 FR 6161, Mar. 7, 1973]

### § 1.50B-2 Electing small business corporations.

(a) *General rule—(1) In general.* In the case of an electing small business corporation (as defined in section 1371 (b)), WIN expenses (as defined in paragraph (a) of §1.50B-1) shall be apportioned pro rata among the persons who are shareholders of such corporation on the last day of such corporation’s taxable year, and shall be taken into account for the taxable years of such shareholders within which or with which the taxable year of such corporation ends. The WIN expenses for each employee shall be apportioned separately. In determining who are shareholders of an electing small business corporation on the last day of its taxable year, the rules of paragraph (d)(1) of §1.1371-1 and of paragraph (a)(2) of §1.1373-1 shall apply.

(2) *Shareholder as taxpayer.* A shareholder to whom WIN expenses are ap-

portioned shall, for purposes of the credit allowed by section 40, be treated as the taxpayer who paid or incurred the expenses allocated to him. If a shareholder takes into account in determining his WIN expenses any WIN expenses with respect to an employee of an electing small business corporation, and if the employment of such employee is terminated in a termination subject to the rules contained in paragraph (a) of §1.50A-3, or if the electing small business corporation fails to pay comparable wages and such failure is subject to the rules contained in paragraphs (a) (2) and (3) of §1.50A-3, then such shareholder shall make a recapture determination under the provisions of section 50A (c) and (d) of the Code and §1.50A-3. See §1.50A-5.

(3) *Computation of the first 12 months of employment.* The first 12 months of employment (whether or not consecutive) and the period described in section 50B(c)(4) of any WIN employee for purposes of determining the amount of WIN expenses (as defined in paragraph (a) of §1.50B-1) shall not be affected by a change in the shareholders in such corporation and shall not be affected by a reduction in any shareholder’s proportionate stock interest in such corporation (for example, by a sale or redemption or by the issuance of additional shares). Thus, the first 12 months of employment (whether or not consecutive) of any WIN employee shall be the same with respect to any shareholder claiming a credit under section 40 for salaries and wages paid or incurred for services rendered by such employee. Also, such first 12 months of employment and the period described in section 50B(c)(4), with respect to any WIN employee, shall not be deemed to begin again because of the making of a valid election under section 1372.

(b) *Summary statement.* An electing small business corporation shall attach to its return a statement showing the apportionment to each shareholder of its WIN expenses with respect to each WIN employee.

(c) *Examples.* Paragraph (a) of this section may be illustrated by the following examples:

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*Example 1.* (i) X Corporation, an electing small business corporation which files its returns on the basis of the calendar year, hired WIN employees on July 1, 1972, whose employment was continuous for the next 24 months. A, a shareholder, has a 10 percent interest in X Corporation. X Corporation incurred \$24,000 in wages with respect to these WIN employees in calendar year 1972, and \$48,000 in calendar year 1973. Assuming that during 1972 shareholder A did not directly incur any other WIN expenses and did not own any other interest in other electing small business corporations, partnerships, estates, or trusts that incurred WIN expenses, for taxable year 1972 shareholder A's credit earned of \$480 (10 percent (A's ownership interest) multiplied by \$24,000 of WIN expenses multiplied by 20 percent) was allowed under section 40 as a credit against his liability for tax.

(ii) On March 1, 1973, shareholder A sold all of his interest to B, a new shareholder. Therefore, the employment of the WIN employees is deemed terminated for purposes of paragraph (a) of § 1.50A-3 with respect to shareholder A. For taxable year 1972, A's recomputed credit is zero because the termination occurred before the end of the period described in paragraph (a)(1) of § 1.50A-3. The income tax imposed by chapter 1 of the Code on A for the taxable year 1973 is increased by the \$480 decrease in his credit earned for the taxable year 1972 (that is, \$480 original credit earned minus zero recomputed credit earned). Under paragraph (a) of this section A has no credit earned for 1973.

(iii) Under paragraph (a)(1) of this section, assuming that during 1973 shareholder B did not directly incur any other WIN expenses

and that he did not own any interest in other electing small business corporations, partnerships, estates, or trusts that incurred WIN expenses, shareholder B's credit earned is \$480 (10 percent (B's ownership interest) multiplied by \$24,000 of WIN expenses multiplied by 20 percent) and is allowable under section 40 as a credit against his liability for tax. Under paragraph (a)(3) for purposes of determining the period of employment that may be taken into account by B the initial date of employment of these WIN employees relates back to the date they were first employed, i.e., July 1, 1972. Thus, the first 12 months of employment ends on June 30, 1973.

*Example 2.* (i) Y Corporation, an electing small business corporation which files its return on the basis of the calendar year, hires five WIN employees in 1972. The WIN expenses incurred with respect to each employee are as follows:

WIN employee No.	WIN expenses
1 .....	\$6,000
2 .....	5,000
3 .....	4,000
4 .....	4,000
5 .....	3,000
Total .....	22,000

On December 31, 1972, Y Corporation has 10 shares of stock outstanding which are owned as follows: A owns 3 shares, B owns 2 shares, and C owns 5 shares.

(ii) Under this section, the WIN expenses are apportioned to the shareholders of Y Corporation as follows:

WIN employees	1	2	3	4	5	Total
Total WIN expenses ..	\$6,000	\$5,000	\$4,000	\$4,000	\$3,000	
Shareholder A (3/10) .....	1,800	1,500	1,200	1,200	900	6,600
Shareholder B (2/10) .....	1,200	1,000	800	800	600	4,400
Shareholder C (5/10) .....	3,000	2,500	2,000	2,000	1,500	11,000

Assume that shareholders A, B, and C did not directly incur any other WIN expenses during their taxable year in which falls December 31, 1972 (the last day of Y Corporation's taxable year), and that such shareholders did not own any interest in other electing small business corporations, partnerships, estates or trust that incurred WIN expenses. The total WIN expenses of shareholder A are \$6,600, of shareholder B are \$4,400, and of shareholder C are \$11,000.

[38 FR 6162, Mar. 7, 1973]

### § 1.50B-3 Estates and trusts.

(a) *General rule—(1) In general.* In the case of an estate or trust, WIN ex-

penses (as defined in paragraph (a) of § 1.50B-1) shall be apportioned among the estate or trust and its beneficiaries on the basis of the income of such estate or trust allocable to each. There shall be apportioned to the estate or trust for its taxable year, and to each beneficiary of such estate or trust for his taxable year in which or with which the taxable year of such estate or trust ends, his share (as determined under paragraph (b) of this section) of the total WIN expenses. The WIN expenses for each employee shall be apportioned separately.